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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,468	07/09/2001	Jamie Teasdale	3621-011139	5640

7590                  04/15/2003

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/15/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/901,468	TEASDALE, JAMIE <i>CM</i>
	Examiner	Art Unit
	C. Lynne Anderson	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 21 January 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-10, 12 and 14-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8, 12 and 15 is/are rejected.

7) Claim(s) 1-10, 14 and 16-18 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Response to Arguments***

In response to applicant's argument that the prior art of record fails to anticipate the collection of body fluids, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Fahsbender discloses a receptacle for containing and carrying liquids, as described in column 1, lines 14-15. These liquids are therefore collected in the receptacle to be contained or carried.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a container for collection of urine such that the urine is not contaminated) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The instant claim 1 does not disclose that the body fluid must be urine, and may not be contaminated, only that body fluids are collected. Any container capable of

collecting liquids fulfills this limitation. Further, Fahsbender discloses the liquids collected in the container 5 are acidic, as is urine.

Fahsbender does not disclose the use of plastic in construction of the container 5, but certainly does not teach away from the use of plastic or teach towards the use of metal. The limitations disclosed by Fahsbender in column 1, lines 9-19, with respect to the use of the container 5 are broad recitations, and may not be read to teach a narrow recitation such as metal.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fahsbender (1,457,657) in view of Galer (4,126,246).

Fahsbender discloses all aspects of the claimed invention but remains silent as to the type of material used to construct the container. Fahsbender discloses an container capable of containing acids, as described in column 1, lines 14-19.

Fahsbender discloses a collection device, as described in column 1, lines 14-19, that is fully capable of collecting urine. The device comprises a specimen container body, as shown in figure 1, having an inner wall and an outer wall. The device further comprises a handle 7 having a first body member with a first contact surface 10 and a second contact surface 5. The first contact surface 10 engages the inner wall of the

specimen container body, and the second contact surface 5 engages the outer wall of the specimen container body, as shown in figure 1, removably securing the handle 7 to the specimen container body.

Galer discloses a container 200, as shown in figure 2, for the purpose of containing acids, as described in column 1, lines 12-15. The container 200 is formed from plastic, as described in column 1, lines 18-21, which offers the strength and inertness needed to contain acids.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the container of Fahsbender out of plastic, as taught by Galer, so the container may be strong and inert enough to contain acids.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (5,202,094) in view of Fahsbender (1,457,657).

Jones discloses all aspects of the claimed invention with the exception of a handle comprising first and second contact members engaging the inner and outer walls of the specimen container body. Jones discloses a method of collecting urine with a handle 14 and a specimen container body 18 comprising the step of connecting the handle 14 to the specimen container body 18, as described in column 3, lines 34-40. The specimen container body 18 is plastic, as described in column 3, lines 56-58.

Fahsbender discloses a specimen container body for the collection of acids, as described in column 1, lines 14-15, with a handle 7 removably attached to the specimen container body. The handle 7 is attached to the specimen container body by the steps of: positioning the first contact member adjacent the rim of the specimen container

body, placing the second contact member adjacent the rim of the specimen container body, and securing the handle 7 such that the first contact surface 10 engages the inner wall of the specimen container body and the second contact surface 5 engages the outer wall of the specimen container body, as described in column 2, lines 58-80. The second contact surface 5 is moved in a first direction towards the first contact member 10 to engage the outer wall of the specimen container body. The handle 7 is removed by the step of disengaging the second contact surface 5 from the outer wall of the specimen container body by moving the second contact surface 5 in a second direction away from the first contact surface 10. The handle 7 of Fahsbender provides secure grip that is simple to attach and remove.

Claims 6-8, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet et al. (5,704,092).

Nicollet discloses all aspects of the claimed invention but remain silent as to the type of material used to construct the container.

Nicollet discloses a handle, as shown in figure 1, for use with a specimen container 1. The handle comprises a first body member 11 defining a first contact surface 13a and a guide hole 25. The handle further comprises a second body member 14 defining a second contact surface 14a and a locking hole, shown in figure 2, but not numbered. A locking member 24 is inserted into the guide hole 25 and locking hole, as shown in figure 2. The first body member 11 and second body member 14 are movable with respect to one another, as shown in figures 1 and 2.

With respect to claim 7, the first contact member 13a defines an arcuate shape, as shown in figure 1, that corresponds to the arcuate shape of the lip of the container 1.

With respect to claim 8, the second contact member 14a defines an arcuate shape, as shown in figure 1, that corresponds to the arcuate shape of the lip of the container 1.

With respect to claim 12, the first body member 11 defines an internal channel, and the second body member 14 is received in the internal channel, as shown in figure 1.

With respect to claim 15, Niccollet discloses all aspects of the claimed invention but remains silent as to the material used to construct the first and second body members. The first and second body members of the handle are designed to grip a specimen collection device such as a cooking pan, as described in column 1, lines 1-3. It is well known to use a material not easily corroded, such as stainless steel, to construct kitchen utensiles. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the first and second body members of the handle of Niccollet out of stainless steel to avoid corrosion of the handle during use.

#### ***Allowable Subject Matter***

Claims 9, 10, 12, 14, and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CUT  
cla  
April 7, 2003

  
WEILUN LO  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**